

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J. KATHLEEN HUGO,

Plaintiff,

v.

THE BOEING COMPANY, a Delaware
Corporation,

Defendant.

Case No. C14-857 RSM

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER

I. INTRODUCTION

A bench trial was held in this matter from December 14, 2015 to December 18, 2015, with live testimony and exhibits submitted by both parties. Closing arguments were heard on February 26, 2016, after the parties prepared proposed Findings of Fact and Conclusions of Law, Dkt. ##82, 83, and Stipulated Findings of Fact, Dkt. #81.

The issues of law are: 1) whether Ms. Hugo introduced sufficient evidence to support her claim that Boeing violated the Americans with Disabilities Act (“ADA”) or Washington Law Against Discrimination (“WLAD”) by intentionally discriminating against her on the basis of her disability or failing to provide a reasonable accommodation when Boeing placed Plaintiff on unpaid medical leave in June 2012, or withdrew the job offer for the Long Beach, California position, or terminated Plaintiff’s employment in January 2013; 2) whether Ms. Hugo introduced sufficient evidence to support her claim that Boeing intentionally retaliated against her by placing her on unpaid medical leave in June 2012 or by terminating her

1 employment in January 2013; 3) whether Ms. Huge introduced sufficient evidence on damages,
2 and 4) whether any party is entitled to attorneys' fees and costs. Dkt. #68 at 9-10.

3 II. STIPULATED FINDINGS OF FACT

4 The parties stipulate to the following findings of fact, and the Court adopts them. *See* Dkt. #81.

- 5 1. Plaintiff J. Kathleen Huge has received training as an industrial engineer.
- 6 2. The Boeing Company employs more than 500 people in the Puget Sound region.
- 7 3. Ms. Huge has been diagnosed with Autism. Huge was diagnosed with Asperger's
8 Syndrome, which is now considered to be part of Autism spectrum disorder by the
9 American Psychiatric Association's Diagnosis and Statistical Manual of Mental
10 Disorders.
- 11 4. Ms. Huge was first employed by the Boeing Company on April 28, 2006 in Everett,
12 Washington.
- 13 5. Ms. Huge commenced a medical leave on February 9, 2007.
- 14 6. In July 2007, Ms. Huge underwent a "fitness for duty" exam with Laura Brown, Ph.D.
- 15 7. Ms. Huge was medically laid off from her employment with Boeing on March 28, 2008.
- 16 8. In August 2009, Ms. Huge was hired as an industrial engineer by Global Aeronautica in
17 Charleston, South Carolina.
- 18 9. Global Aeronautica was acquired by Boeing in 2010, and as a result, Ms. Huge again
19 became a Boeing employee in the position of Industrial Engineer 2 on June 18, 2010.
- 20 10. In late 2010, Ms. Huge applied for and was offered an industrial engineer position in
21 Renton, Washington.
- 22 11. Ms. Huge started working in the position of Industrial Engineer 3 in Renton on March
23 11, 2011 in the RFID group.
- 24
- 25
- 26
- 27
- 28

1 12. On May 4, 2012, Ms. Huge was advised that she needed to undergo a “coaching
2 session” with her manager, Benjie Gualco, to discuss her work performance.

3 13. After being notified of the coaching session, Ms. Huge complained that she was being
4 harassed by her lead, Chic Sundahl, because of her disability.

5 14. On approximately May 21, 2012, Boeing moved Ms. Huge’s work group from RFID to
6 Metrics.

7 15. Ms. Huge remained an Industrial Engineer 3 and her compensation and benefits
8 remained the same.

9 16. On May 23, 2012, Huge emailed Nancy Steig, who was temporarily covering for Ms.
10 Huge’s manager Benjie Gualco, stating “I need instructions in writing. This helps me to
11 understand what is being asked. It also shows what I was asked to do, so if plans
12 change, then at least I have a record of what I was asked to do.”

13 17. Ms. Huge was issued a Documented Verbal Warning on or about May 24, 2012.

14 18. When Ms. Huge was given the verbal warning, she requested that her job instructions
15 be given to her verbally and in writing. She was told she had no medical restrictions on
16 file and should see Boeing Medical if she needed an accommodation.

17 19. Ms. Huge was issued a 30-day Performance Improvement Plan on approximately May
18 29, 2012.

19 20. On June 11, 2012, Mary Dowell sent Ms. Huge a notice to attend a meeting on June 12,
20 2012, with Ms. Dowell, Mr. Gualco, HR and Plaintiff’s Union Representative.

21 21. On June 12, 2012, Ms. Huge met with Dr. Judith Molin in Boeing Medical and
22 provided her with a letter from Dr. James Kaplar, Ph.D. stating Huge should be
23
24
25
26
27
28

1 accorded accommodations to perform her job, including that she “be given her
2 assignments and tasks in written form or electronic form.”

3 22. On June 12, 2012, Boeing Medical issued the medical restriction “For all
4 tasks/assignments: Give instructions verbally and written or electronic form.”

5 23. On June 13, 2012, Boeing Accommodation Services met with Ms. Huge, her Union
6 Representative, and HR regarding her requested accommodations.

7 24. Boeing placed Ms. Huge on an involuntary medical leave of absence effective June 14,
8 2012.

9 25. On June 19, 2012, Ms. Huge was sent a letter from Dr. Molin at Boeing Medical
10 requesting Huge to provide a letter from a current treating physician or psychologist
11 that would identify Plaintiff’s diagnosis, any requested accommodations or medical
12 restrictions for Huge, and identifying whether the requested accommodations were
13 temporary or permanent.
14 26. Ms. Huge provided a letter from Dr. Crystal Kong-Wong on July 2, 2012, that stated

15 she saw Huge in her clinic on 6/18/12 and “can confirm her diagnosis of Asperger’s
16 Syndrome (High functioning Autism),” that she was referring Huge to vocational
17 counseling, and that she had reviewed a letter written by Dr. Kaplar and that Huge may
18 also benefit from a job coach.
19 27. After Dr. Molin spoke with Dr. Kong-Wong, Boeing requested that Ms. Huge receive

20 an independent mental health evaluation.
21 28. On July 11, 2012, Dr. Molin sent a job analysis and cognitive job analysis for Ms.

22 Huge’s position to Dr. Laura Brown requesting that she conduct an independent mental
23 health evaluation of Huge.
24 29. On July 11, 2012, Dr. Molin sent a job analysis and cognitive job analysis for Ms.
25 Huge’s position to Dr. Laura Brown requesting that she conduct an independent mental
26 health evaluation of Huge.
27 30. On July 11, 2012, Dr. Molin sent a job analysis and cognitive job analysis for Ms.
28 Huge’s position to Dr. Laura Brown requesting that she conduct an independent mental
29 health evaluation of Huge.

1 29. Ms. Huge was scheduled to be evaluated by Dr. Brown on July 25, 2012.

2 30. On July 19, 2012, Ms. Huge submitted a letter from Dr. Robert Fraser, Ph.D. a
3 rehabilitation psychologist at Harborview Medical Center stating “Ms. Huge would
4 benefit from a job coach or mentor during the first 15-20 minutes of the work day in
5 order to ensure that she has received her instructional sequence of tasks for the day
6 completely and in correct order. Another option would be that Ms. Huge be provided
7 with a complete task list by her supervisor, either written or by e-mail, each morning
8 during this period of adaptation. Ms. Huge should be given time to learn her new
9 statement of work and/or new systems. Care should also be given during this period of
10 time to fully explain any mistakes she made while she is learning the new position. It
11 could be helpful for her supervisor(s) and perhaps co-workers to benefit from an
12 educational session on Asperger's and effective communication with a person having
13 the syndrome.” The letter also stated “Other accommodation avenues could also be
14 explored.”

15 31. Ms. Huge was evaluated by Dr. Gary Stobbe, M.D. and Dr. Julie Davies, Ph.D., in
16 September and October 2012.

17 32. While Ms. Huge was on the medical leave of absence, she applied for other positions
18 within Boeing and was offered an industrial engineering position in Macon, GA and a
19 manufacturing engineering position in Long Beach, CA.

20 33. Ms. Huge accepted the Long Beach, CA manufacturing engineering position on
21 September 7, 2012, which had a tentative start date of October 5, 2012.
22
23
24
25
26
27
28

1 34. On October 8, 2012, Manager Dung Tran, who interviewed Ms. Huge on August 28,
2 2012, contacted Boeing Staffing and requested to withdraw the offer due to the need to
3 fill the position.

4 35. On October 9, 2012, Ms. Huge was advised that the Long Beach job offer would be
5 withdrawn.
6

7 36. Boeing offered the Long Beach position to Miguel Pascual on October 13, 2012.

8 37. On October 16, 2012, Boeing received the medical evaluation from Dr. Stobbe and Dr.
9 Davies and Dr. Molin called Dr. Davies to discuss her questions regarding the
10 recommendation of a job coach and was told she could expect additional information
11 from Dr. Stobbe on October 18, 2012. On October 18, 2012, Dr. Molin emailed Dr.
12 Stobbe and he called her back on October 19, 2012, and recommended a job coach for
13 two hours per day for one month to start and said he was hopeful Deb Bloom, Ms.
14 Huge's counselor, could act as job coach even though she was not a job coach, and that
15 he and Dr. Davies would get back to Dr. Molin regarding whether Ms. Bloom was
16 available to serve as job coach.
17
18

19 38. On or about October 23, 2012, Miguel Pascual accepted the Long Beach position.

20 39. Pascual started work at Boeing's Long Beach facility on November 7, 2012.

21 40. On October 24, 2012, Dr. Stobbe emailed Dr. Molin that Ms. Bloom was available but
22 Ms. Huge now was requesting DVR to provide the job coach and he had encouraged
23 Huge to speak further with Ms. Bloom and her attorney.
24

25 41. On October 30, 2012, Boeing learned that Ms. Bloom would act as a job coach and
26 Boeing Accommodation Services Representative Shaun Holdaas requested a badge for
27
28

1 the job coach to secure entry into Boeing locations with a potential start date of
2 November 5, 2012.

3 42. On November 5, 2012, Mr. Holdaas met with Ms. Bloom regarding Huge potentially
4 returning to work on November 6, 2012.

5 43. Ms. Bloom required that a contract be signed by Boeing with an indemnification
6 provision before she began any work as a job coach.

7
8 44. On November 5, 2012, Mr. Holdaas informed Ms. Huge that a job coach would not be
9 available November 6 or 7 due to the contract review and gave her the option to return
10 to work without a job coach on November 6 and 7, before the vacation requested by
11 Huge from November 8 to 12, 2012, or return to work November 13, 2012, and Huge
12 chose to return November 13, 2012.

13
14 45. On October 25, 2012, Mr. Holdaas began to explore alternative job coaches through the
15 Department of Vocational Rehabilitation Services.

16 46. Ms. Bloom and Boeing did not agree on a contract so Mr. Holdaas worked with DVR to
17 obtain job coaches through ENSO.

18
19 47. On November 16, 2012, Boeing met with ENSO regarding providing the job coach
20 services and then waited for ENSO to provide a start date and action plan for the job
21 coaches.

22 48. Ms. Huge returned to work on December 21, 2012, so she would receive benefits and
23 holiday pay, but the job coaches did not start until January 2013.

24
25 49. Ms. Huge filed a disability discrimination charge with the EEOC on December 20,
26 2012.

1 50. Ms. Huge was provided a job coach, Jamie Carter (now Eang) of ENSO, on January 7,
2 2013. The job coach was jointly paid for by the Washington Department of Vocational
3 Rehabilitation and Boeing.

4 51. After Ms. Huge returned to work, she was issued the "Notice of Remedial Action" or
5 "NORA" planned in June 2012, a written warning planned in June 2012, and her
6 performance evaluation for 2012.
7

8 52. Jamie Carter sent Ms. Huge an email entitled "Action Items for Kathleen" on January 8,
9 2013.

10 53. On January 16, 2013, Ms. Huge met with ENSO and DVR. Huge informed ENSO that
11 she did not want Jamie Carter as her job coach.
12

13 54. On January 17, 2013, Ms. Huge was placed on leave.

14 55. On January 21, 2013, Ms. Huge's employment was terminated.

15 56. Ms. Huge earned \$100,668 from Boeing in 2011.

16 57. Ms. Huge earned \$53,878 from Boeing in 2012.

17 58. Ms. Huge earned \$10,869 from Boeing in 2013.

18 59. Boeing contributed \$662.53 per month for Ms. Huge's insurance in 2013.

19 60. Ms. Huge earned \$38,967.31 from Northrop Grumman in 2013.

20 61. Ms. Huge earned \$80,617.30 from Northrop Grumman in 2014.
21
22

23 **III. CREDIBILITY OF THE WITNESSES**

24 "In an action tried on the facts without a jury... the court must find the facts specially
25 and state its conclusions of law separately." Fed. R. Civ. P. 52(a). The trial court is
26 empowered to judge the credibility of the witnesses. *See Spokane Arcade, Inc. v. City of*
27
28

1 *Spokane*, 75 F.3d 663, 665 (9th Cir. 1996); *Zivkovic v. S. Cal. Edison Co.*, 105 Fed. Appx. 892,
2 893 at n.1 (9th Cir. 2004) (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575,
3 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1985)).

4 The Court heard from many of the above named individuals as witnesses in the bench
5 trial. The Court finds that supervisors Benjie Gualco and Dan McQueen, coworker Diem
6 Huynh, job coach Jamie Eang née Carter, Boeing Accommodation Services Representative
7 Sean Holdaas, and Long Beach Manager Dung Tran were credible. Their answers during
8 testimony were complete and appeared to be honest, and their demeanor on the witness stand
9 leads the Court to conclude that they were truthful. To the extent that Ms. Huge's testimony
10 differed from her supervisors, coworkers, and job coaches, and from admitted evidence, she
11 was not credible. Ms. Huge's answers during testimony appeared calculated to support her
12 legal position rather than an honest recitation of events, and her demeanor on the witness stand
13 leads the Court to conclude that she was repeatedly searching to state only those facts that
14 support her position, and omitting or neglecting those facts that harmed her position.
15 Furthermore, the findings of fact below indicate that Ms. Huge has repeatedly submitted
16 demonstrably inaccurate statements to Boeing and other employers in her job search.
17
18
19

20 **IV. ADDITIONAL FINDINGS OF FACT**

21 The following additional findings of fact are made by the Court and based upon a
22 preponderance of the evidence presented at trial and the above credibility analysis.
23

- 24 1. According to expert testimony, high functioning autism and Asperger's syndrome have
25 the characteristics of social communication difficulties, cognitive inflexibility, and
26 difficulty with perspective taking. Dkt. #75 at 47:6-10. These deficits in social
27 interaction often include difficulty with emotional reciprocity in conversations,
28

1 difficulties in nonverbal communication and perceiving nonverbal behaviors, and
2 difficulty adjusting behavior to suit different social contexts and venues. Dkt. #76 at
3 8:3-15. Anxiety is very common for individuals on the autism spectrum. Dkt. #75,
4 47:11-16; Dkt. #77, 7:2-15. Individuals on the autism spectrum frequently experience
5 difficulty navigating the world. They often see “black-and-white” where nuance might
6 be perceived by others; they often struggle with the cognitive flexibility that is needed
7 to navigate social interactions. Dkt. #75, 48:2-21.

- 9 2. On May 21, 2012, Ms. Huge transitioned into a new group, Metrics, which required less
10 customer interaction than her previous position. Dkt. #79 at 83:25-84:21. Mr. Gualco
11 and other employees invested a substantial amount of time and effort to help Ms. Huge
12 succeed in the Metrics group. They provided her with standard work instructions which
13 contained step-by-step instructions for completing her tasks and they had Ms. Huge sit
14 with her team leader and other coworkers for training. Dkt. #77 at 147:9-11; Dkt. #79
15 at 87:23-93:9; Ex. A-371. Ms. Huge continued to not meet the performance
16 expectations of an IE 3. *Id.*; Dkt. #78 at 185:3-194:4; Exs. A-72, A-166, A-182.
- 17 3. During this time period, Ms. Huge talked about personal issues to her coworkers
18 frequently, and her coworkers complained to Ms. Huge’s manager that she was
19 distracting them to the point that they had to leave the area to get work done. *See* Exs.
20 A-77, A-98, A-191; Dkt. #78 at 192:11-20. Ms. Huge’s supervisors also were
21 concerned about a number of unprofessional email communications sent by Ms. Huge.
22 Dkt. #78 at 192:25-193:8. For example, Ms. Huge emailed her union representative and
23 copied Nancy Steig, claiming she was not able to take her lunch due to Ms. Steig’s
24 request, which misrepresented Ms. Steig’s request, Ex. A-250, and Ms. Huge emailed
25
26
27
28

1 someone outside the group stating Suzy Burdge and Ms. Steig would not let her attend a
2 meeting, after she had told Ms. Burdge she understood she needed to stay and work on a
3 metrics assignment due to a deadline. Ex. A-187.

- 4 4. Ms. Huge's managers attempted to give Ms. Huge both verbal and written instructions
5 even though Ms. Huge failed to go to Boeing Medical to request any accommodation
6 for a disability. Ex. A-77 at 2; Dkt. #75 at 194:4-11, 204:6-16.
- 7 5. Throughout May and June 2012, Mr. Gualco and Ms. Huge's new team leader, Diem
8 Huynh, observed that Ms. Huge continued to underperform and that she failed to
9 complete the tasks outlined in her 30-day performance improvement plan. *See*
10 *generally* Dkt. #78 at 214:2-225:8; Exs. A-35, A-38, A-195. They also observed that
11 Ms. Huge appeared to lack basic engineering skills and required guidance and step-by-
12 step instructions for basic tasks and analyses that an IE 3 should perform independently.
13 *Id.* Ms. Huynh, consistent with Matt Stewart, Fraser Whigham, Carl Hassenmeyer, also
14 observed that Ms. Huge's engineering skills appeared to be those of an IE 1. Dkt. #78
15 at 224:20-23.
- 16 6. On June 5, 2012, Ms. Huge's first and second-level managers and representatives from
17 Boeing HR, Employee Relations, and EAP met to discuss Ms. Huge's poor work
18 performance and decided to give her a Notice of Remedial Action ("NORA"), which
19 expressly documented Boeing's expectations for Ms. Huge's performance, due to her
20 lack of progress under the PIP. Ex. A-28.
- 21 7. On June 6, 2012, Mr. Gualco and Ms. Huynh met with Ms. Huge and coached her about
22 being disruptive in the workplace and limiting her personal calls to non-work hours.
23
24
25
26
27
28

1 Ex. A-77 at 2; *see also* Ex. A-169. Ms. Huge also was told that she was not completing
2 her assigned tasks. *Id.*

3 8. On June 12, 2012, Ms. Huge met with Boeing Medical's Dr. Judith Molin and stated
4 she was on a PIP and needed to receive her work instructions in writing. Ms. Huge
5 gave Dr. Molin a letter dated June 11, 2012, from Ohio doctor James Kaplar, Ph.D.,
6 stating that Ms. Huge had autism or Asperger's syndrome and that she required
7 accommodations to do her job. Dr. Kaplar's letter stated that "it would be helpful for
8 Ms. Huge to be given her assignments and tasks in written form or electronic form (e.g.,
9 via e-mail) as well." Ex. A-321 at 6-7.

10
11 9. Boeing Medical does not have any medical provider on staff who has significant
12 experience in psychological or psychiatric mental health issues. Dkt. #79 at 139:1-8,
13 139:18-22.

14
15 10. Dr. Molin discussed with Ms. Huge her requested accommodation of receiving work
16 instructions in writing. Ex. A-321 at 5. Based on this discussion and the letter from Dr.
17 Kaplar, Boeing Medical issued medical restrictions stating that Ms. Huge should be
18 given all tasks and assignments both verbally and in written or electronic form. *Id.*; Dkt.
19 #76 at 49:22-50-11.

20
21 11. On June 13, 2012, Ms. Dowell, Mr. Gualco, a Disability Management Representative,
22 an Accommodation Services Representative, and HR discussed whether Ms. Huge's
23 medical restrictions could be accommodated. Ex. A-46 at 13-14. Mr. Gualco reported
24 that he already was providing Ms. Huge with written tasks, extra time and coaching,
25 and that the significant level of detail and follow up that Ms. Huge had been requesting
26
27
28

1 in writing was not sustainable and required so much time that it was impacting
2 productivity in the management and lead positions. *Id.*; Dkt. #79 at 89:25-92:15.

3 12. Assisting Ms. Huge consumed at least 80% of Mr. Gualco's work day and over 50% of
4 Ms. Huge's team leader's day. Dkt. #79 at 89:25-92:15, 95:19-96:3, 107:6-18. Given
5 the complexity of Ms. Huge's work, the fast operating speed of business requirements
6 in the work group could not be met with such a significant amount of time being spent
7 detailing all of Ms. Huge's work tasks and assignments to her satisfaction. *Id.*

8
9 13. On June 14, 2012, Boeing Medical placed Ms. Huge on a medical leave of absence until
10 Boeing could clarify what reasonable accommodations Ms. Huge needed and whether
11 Ms. Huge could successfully perform the essential functions of her job with or without
12 reasonable accommodations. *Id.*

13
14 14. On June 14, 2012, Ms. Huge attempted to return to Boeing Medical and see Dr. Molin.
15 Ex. A-321 at 8. Because Dr. Molin was still waiting for information from Ms. Huge's
16 healthcare providers and because Ms. Huge had caused disruptions in the Boeing
17 Medical clinic, Dr. Molin did not meet with her that day. *Id.*; *see also* Dkt. #79 at
18 125:8-126:8. Ms. Huge responded by calling the clinic at least five times and
19 threatening to call the medical board and "to have Dr. Molin's license pulled." Ex. A-
20 321 at 8.

21
22 15. On June 14, 2012, Shaun Holdaas spoke with Ms. Huge about her medical leave and
23 accommodation. Ms. Huge told Mr. Holdaas that she had actually requested everything
24 in writing because she wanted to document all conversations and tasks to ensure that
25 they could not be used against her. Dkt. #79 at 150:20-22; Ex. A-46 at 12. Mr. Holdaas
26 recalls Ms. Huge stated: "I can't believe you guys are so stupid. I put that medical
27
28

1 restriction in there so that they couldn't use anything against me.” Dkt. #79 at 150:20-
2 22.

3 16. On June 18, 2012, Dr. Molin called Dr. Kaplar for clarification of Ms. Huge’s medical
4 needs, but he was not available so Dr. Molin left a message with his answering service.
5 That same day, Ms. Huge emailed Dr. Molin requesting an interpreter, translator, or
6 transcriber to write down all of her tasks and assignments. Ex. A-321 at 12, 31-32; *see*
7 *also* Ex. A-80.
8

9 17. On June 21, 2012, Dr. Molin left another message for Dr. Kaplar, who never responded,
10 and contacted independent mental health examiner Dr. Laura Brown about evaluating
11 Ms. Huge, but Dr. Brown was out of the office until July 3, 2012. Ex. A-321 at 17.
12

13 18. In June 2012, Ms. Huge saw a general practitioner twice, Dr. Crystal Kong-Wong, who
14 faxed Boeing Medical a completed functional capacity evaluation (“FCE”) on June 26,
15 2012. Ex. A-321 at 20-21. Dr. Molin called Dr. Wong who explained that Ms. Huge
16 did not have any physical restrictions under the FCE, but that Dr. Wong was not trained
17 to diagnose Ms. Huge’s mental health disorder or determine cognitive restrictions. *Id.*
18 Dr. Wong suggested that Ms. Huge required an evaluation by a Ph.D. who specialized
19 in autism or Asperger’s. *Id.* Dr. Wong followed up her recommendations by letter on
20 June 28, 2012, and referred Ms. Huge to vocational expert, Joe Stuckey, for cognitive
21 evaluation and recommendations. Ex. 86. Based on Dr. Wong’s statement that she was
22 not capable of evaluating Ms. Huge’s cognitive abilities and could only suggest
23 physical, not cognitive accommodations, and Dr. Wong’s agreement that Ms. Huge’s
24 medical restrictions should not be changed until Ms. Huge could be evaluated by an
25
26
27
28

1 autism expert, Dr. Molin did not change Ms. Huge's medical restrictions, pending input
2 from a cognitive evaluation. Ex. A-321 at 24; Dkt. #79 at 117:3-14.

3 19. Boeing requested that Ms. Huge receive an independent mental health evaluation by a
4 qualified doctor, and in early July 2012, referred Ms. Huge to Dr. Laura Brown, Ph.D.
5 Ex. 91. On July 9, 2012, Dr. Molin noted that the exam was particularly necessary for
6 her to reconcile Dr. Waid's February 2011 letter stating that Ms. Huge needed no
7 accommodation or restrictions, with Ms. Huge's requests for a translator, job coach, and
8 written instructions. Ex. A-321 at 32.

9
10 20. In July 2012, Ms. Huge was seen twice by vocational specialist Dr. Robert Fraser,
11 Ph.D., after which he recommended in a letter Dr. Molin received on July 20, 2012, that
12 Ms. Huge receive a number of accommodations, including a job coach, a written task
13 list, and extra time to learn new tasks. Dkt. #76 at 19:11-20:13; Ex. 89. Dr. Fraser does
14 not specialize in autism and did not give Ms. Huge any psychological testing. Dkt. #76
15 at 19:5-10, 21:8-10. Dr. Fraser did not review any psychological or performance
16 evaluations for Ms. Huge, and relied only on a letter from Dr. Kapler and work emails
17 that Ms. Huge provided him. Dkt. #76 at 21:11-22:25. When Dr. Fraser wrote that Ms.
18 Huge should receive a written task list, he meant "major tasks," not step-by-step
19 instructions. Dkt. #76 at 23:8-13. Dr. Fraser also believed that Ms. Huge required a job
20 coach for only 15-20 minutes per day for a period of time. Dkt. #76 at 23:14-22.

21
22 21. On July 9, 2012, Ms. Huge wrote in an email to Dr. Fraser "The ONLY reason as to
23 why I requested assignments in writing was so that I can hold them to what they wanted
24 me to do and that it would be very difficult to say, 'I never said that', because I will
25
26
27
28

1 have the assignment in writing. It would serve as ‘PROOF’ and ‘EVIDENCE’.” Ex.
2 A-393 (emphasis in original).

3 22. On July 12, 2012, Dr. Brown told Boeing Medical that Ms. Huge had scheduled her
4 exam for July 25, 2012, to accommodate Ms. Huge’s vacation in the middle of July.
5 Ex. A-321 at 38. Once the exam was scheduled, Ms. Huge sent Mr. Holdaas and Dr.
6 Brown numerous emails asking about the tests Dr. Brown would use as part of the
7 evaluation, and she told them that she would be studying for the tests. Exs. A-321 at
8 39-43, A-312. Ms. Huge sent multiple emails threatening to walk out and cancel the
9 tests if she was not told the names of the tests in advance so that she could have time to
10 prepare and “beat” the tests. *Id.* Dr. Brown then called Dr. Molin stating that Ms. Huge
11 was escalating and that Ms. Huge threatened to sue Dr. Brown for not giving her
12 information about the psychological tests in advance so that she could “beat” the tests
13 and “tweak her responses.” *Id.*

14 23. On July 13, 2012, Ms. Huge made more requests, asking to record her session with Dr.
15 Brown and for a guardian or personal assistant to accompany her. *Id.* On July 16, Ms.
16 Huge requested extra time to take the psychological tests. *Id.* Dr. Brown explained to
17 Ms. Huge that the tests were standardized and had to be timed to produce accurate
18 results, but allowed Ms. Huge to record the exam. *Id.* On July 20, 2012, Ms. Huge sent
19 Dr. Brown more emails requesting the names and details of the tests. Dr. Brown again
20 explained to Ms. Huge that preparing for the tests was not necessary or appropriate. *Id.*

21 24. On July 23, 2012, Ms. Huge emailed Dr. Brown stating that she was sick and was going
22 to be sick for the next two days as well and asked to reschedule the July 25 exam for
23
24
25
26
27
28

1 July 26. Exs. A-312 at 11, A-321 at 51. Five hours later, Ms. Huge canceled the July
2 26 exam and rescheduled the test for July 30. Ex. A-312 at 13.

3 25. On July 25, 2012, the day Ms. Huge had been scheduled for evaluation by Dr. Brown
4 but canceled saying she was sick, Ms. Huge visited marriage and family counselor
5 Deborah Bloom. Dkt. #75 at 68:6-14, 69:18-24. Ms. Huge told Ms. Bloom that she
6 wanted to find a copy of the questions she would be asked on the tests, but Ms. Bloom
7 told her that would be unethical and there was no way to train for the tests. Dkt. #75 at
8 78:2-15.

9
10 26. On July 25, 2012, Ms. Huge emailed Dr. Brown and stated "My attorney has 7 other
11 clients who hired him because you have given recommendations to Boeing that makes
12 (sic) it impossible to accommodate them. They are now unemployed, and collecting
13 unemployment, and SSI. They are living off of your taxes." Ex. A-312 at 30. Dr.
14 Brown responded "Kathleen, this is becoming unproductive. I am going to propose that
15 you stop emailing me and that you simply participate in the evaluation process." *Id.* at
16 31.
17

18
19 27. On July 26, 2012, Ms. Huge emailed Dr. Brown with more requested accommodations
20 and gave her permission to contact a coworker at Boeing in Charleston. Ex. A-213 at
21 32. Around this time, Ms. Huge's attorney, Matt Bean, contacted Dr. Brown and she
22 felt he was attempting to influence the outcome of the exam. Ex. A-321 at 51, 54. Dr.
23 Brown refused Mr. Bean's request to make certain findings and on July 30, 2012, Dr.
24 Brown told Boeing she would not go forward with the evaluation under the
25 circumstances. *Id.*; See Ex. A-56.
26
27
28

1 28. After Dr. Brown decided not to evaluate Ms. Huge, Dr. Molin immediately began
2 looking for a new evaluator. Dr. Molin called Psychiatrist David White, M.D. on July
3 30, 2012, but he declined the case. The same day she tried Psychiatrist Steven Becker,
4 M.D. and left a message with his receptionist. Ex. A-321 at 54.

5 29. While Dr. Molin attempted to find a new evaluator, Dr. Fraser contacted Boeing on
6 August 6, 2012, now stating that Ms. Huge no longer needed instructions in writing, in
7 contradiction with his earlier evaluation. Ex. A-321 at 59. Given this about face, Dr.
8 Molin called Dr. Fraser, who admitted that he wrote the letter at Ms. Huge's request
9 based on her statement that she no longer needed instructions in writing because she
10 would be receiving written tasks through a performance plan. Ex. A-321 at 56-58; Dkt.
11 #76 at 24:1-5.

12 30. Based on Ms. Huge's changing accommodation requests, Dr. Molin felt an independent
13 psychological evaluation was necessary to determine Ms. Huge's accommodation needs
14 and reconcile the conflicting information received from Ms. Huge and her numerous
15 doctors. Dkt. #76 at 48:16-24. *See also* Exs. 84, 95. Ms. Huge and her attorney agreed
16 to cooperate with a psychological examination. Ex. 95.

17 31. On August 14, 2012, Ms. Huge submitted a letter from Ms. Bloom requesting a job
18 coach as a permanent accommodation. Ex. A-321 at 69. At the time, Ms. Bloom
19 believed that Ms. Huge should undergo a new psychological evaluation and
20 communicated that to Ms. Huge's attorney. Dkt. #75 at 71:19-72:9. Ms. Bloom
21 suggested that Dr. Stobbe conduct the evaluation. *Id.* at 79:9-24.

22 32. On September 21, Boeing Medical received a second letter from Ms. Bloom stating that
23 she had reviewed a September 6, 2012, evaluation from Dr. Stobbe and was now
24
25
26
27
28

1 changing her recommendation to say that a job coach was not needed if Ms. Huge was
2 transferred to a different Boeing position or location. Ex. A-321 at 70. This change,
3 like many of the other changes that Ms. Huge's doctors had made, was made at Ms.
4 Huge's request and after Ms. Huge's attorney approved the letter. Dkt. #75 at 82:13-
5 84:3.

6
7 33. While Ms. Huge was on medical leave and Boeing was requesting information
8 regarding her ability to perform her job and needed accommodations, Ms. Huge had
9 applied for a Manufacturing Engineer job at Boeing's Long Beach, California facility.
10 The Manufacturing Engineering job required extensive customer interaction,
11 approximately 20-30 customer phone calls per day, and fast responses to customer
12 questions. Dkt. #79 at 36:2-38:21.

13
14 34. Long Beach Manager Dung Tran interviewed Ms. Huge over the phone, and on August
15 28, 2012, offered her the job with an October 5, 2012, start date. Ms. Huge, however,
16 was not cleared to return to work as an engineer when she was scheduled to report to
17 work. Dkt. #79 at 38:22-39:8, 40:23-41:11.

18
19 35. By October 8, 2012, because Ms. Huge had not reported to work by the start date, Mr.
20 Tran contacted Boeing Staffing and requested to withdraw Ms. Huge's offer due to his
21 group's immediate need to fill the empty position to address a massive backlog and
22 threats from his customers to cancel their orders. Dkt. #79 at 39:19-42:23. Mr. Tran
23 had no knowledge of Ms. Huge's disability or that she was on medical leave. *See id.*
24 Mr. Tran did not believe that he could wait for Ms. Huge to become available to fill the
25 position in his organization. *Id.* at 46:16-47:19.
26
27
28

1 36. Ms. Huge's IE 3 position in Renton continued to be held for her, but locating a job
2 coach who was available every day for 30 days, as Dr. Stobbe indicated Ms. Huge
3 needed, was difficult. *See* Ex. A-321 at 120; Ex. 380. On October 24, 2012, Dr. Stobbe
4 emailed Dr. Molin to tell her that Ms. Bloom was available to act as Ms. Huge's job
5 coach, but not during the time slot that Ms. Huge preferred, and that Ms. Huge was
6 insisting on using a job coach from the Washington Department of Vocational
7 Rehabilitation ("DVR") who would be available first thing in the morning. Ex. A-321
8 at 111-113; *see* Ex. 380. Dr. Stobbe recommended that Ms. Huge speak with her
9 attorney and Ms. Bloom. *Id.* On October 30, 2012, Ms. Bloom agreed to act as Ms.
10 Huge's job coach and she was scheduled to meet with Ms. Huge's managers at Boeing
11 on November 5, so that Ms. Huge could return to work on November 6. Ex. A-321 at
12 114, 118.

15 37. Ms. Bloom would not agree to provide the job coach services unless indemnification
16 provisions were added to protect her from being sued, which delayed Ms. Huge's return
17 date. Ex. 179. Ms. Bloom was adamant that no work could begin until her contract was
18 signed by a Boeing representative. Ex. A-46 at 3.

20 38. While Boeing tried to resolve Ms. Bloom's indemnification request, Boeing gave Ms.
21 Huge the option to work without a job coach for November 6 and 7, 2012, and take her
22 requested vacation from November 8 to 12, 2012, but Ms. Huge chose to delay her start
23 date until November 13, 2012. Exs. A-46 at 3, A-293 at 55.

25 39. Ms. Bloom met with Ms. Huge's managers and took steps to act as Ms. Huge's job
26 coach, but ultimately informed Boeing that she would not agree to work as Ms. Huge's
27 job coach. Dkt. #75 at 92:11-94:11.
28

1 40. Due to the delay caused by Ms. Bloom dropping out as job coach, Mr. Holdaas emailed
2 DVR, requesting potential job coach services. Ex. A-380. Boeing then began
3 communicating with Stephanie Nuce of ENSO Employment Services, who was
4 identified by DVR for job coach services. Exs. A-46 at 2, A-321 at 120, A-380 at 61.
5 On November 16, 2012, Ms. Huge's managers and Mr. Holdaas met with ENSO to
6 discuss Ms. Huge's situation, the job that Ms. Huge would be performing upon her
7 return, and the job coach's role in helping Ms. Huge return to work. Ex. A-46 at 2.
8 Boeing and DVR ultimately arranged for Jamie Carter (who later changed her name to
9 Jamie Eang) and Stephanie Nuce of ENSO to serve as Ms. Huge's job coaches. Ex. A-
10 46 at 1.
11

12
13 41. Mr. Holdaas assisted Ms. Huge throughout the accommodation process by talking and
14 emailing with Ms. Huge on a frequent basis, communicating extensively with Dr.
15 Molin, communicating with Ms. Huge's managers, researching potential
16 accommodations with the Job Accommodation Network, researching and sourcing
17 potential job coaches, working with DVR and ENSO, and meeting and corresponding
18 with the job coaches. Dkt. #76 at 83:24-25; Dkt. #79 at 143:23-146:8, 147:22-150:1;
19 Ex. A-46. He received over 1,500 emails related to Ms. Huge's case, with a great
20 number of those emails coming directly from Ms. Huge. *Id.*
21

22
23 42. Boeing prepared for Ms. Huge's job coaches by finalizing the ENSO contract and
24 obtaining security badges for the job coaches. *See, e.g.*, Ex. A-380 at 94-95. Ms.
25 Huge's managers were out of the office in December prior to Boeing's winter shutdown
26 (December 22, 2012 to January 1, 2013), Ex. A-380 at 98, but Boeing allowed Ms.
27 Huge to return to work for one day on December 21, 2012, so she would qualify for
28

1 benefits and receive pay during the Boeing shutdown over the holidays, and then the
2 plan was for her to return to work with her job coaches on January 2, 2013. Ex. A-380
3 at 94.

4 43. On January 2, 2013, Ms. Huge returned to work at Boeing after the winter shutdown.
5 However, instead of performing work, Ms. Huge spent much of her time e-mailing and
6 calling SPEEA to complain. In response, Ms. Huge's Union representative, Rich
7 Plunkett, told Ms. Huge that she needed to spend her work time accomplishing her
8 work-related tasks and not to focus on making complaints to her Union. Exs. A-159, A-
9 352 at 3.
10

11 44. On January 3, 2013, Ms. Huge was permitted to clean out her email inbox and given the
12 assignment to simply finish unpacking her boxes but she did not complete that task. Ex.
13 A-352 at 3. That same day, Ms. Huge asked her Union representative, Charles Tatel
14 whether she had a right under her Union contract to contact/call SPEEA (her Union)
15 during business hours to report workplace concerns. Ex. A-159. Ms. Huge's Union
16 contract did not give Ms. Huge the right to contact the Union during working hours in
17 lieu of doing her assigned work tasks. Dkt. 78 at 164:10-165:23; Ex. A-407. Mr. Tatel
18 told Ms. Huge via email that she did not have a right under the Union contract to
19 contact or call the Union during working time. Dkt. #78 at 164:10-165:23; Ex. A-407.
20 Despite this clear instruction from her own Union representative, Ms. Huge continued
21 to contact her Union during work hours to complain about Boeing management. Dkt.
22 #79 at 198:9-13, 204:18-205:13.
23

24 45. ENSO delayed starting the job coaches until January 7, 2013, due to payment issues.
25 Ex. A-46 at 1.
26
27
28

1 46. With Ms. Huge's job coaches present, Boeing provided Ms. Huge with a Notice of
2 Remedial Action ("NORA") on January 7, 2013, expressly documenting Boeing's
3 expectations for Ms. Huge's work performance which Boeing had planned to
4 implement prior to her going on leave. Ex. A-28. During the meeting regarding the
5 NORA, Ms. Huge stated that the coaches were there as her "witnesses" and that
6 "everyone will be subpoenaed in her lawsuit." Ex. A-352 at 20. Ms. Huge also
7 interrupted others and ignored her job coach's suggestion to respect others and to listen
8 to what was being said. *Id.*

9
10 47. During this time, Ms. Huge continued to not focus on completing her assigned work
11 tasks, and instead conducted personal business and side tasks during the majority of the
12 workday and ignored directions from her managers and team leader. Exs. A-94, A-213,
13 A-352; Dkt. #79 at 196:21-204:8. Rather than complete her assignments, Ms. Huge
14 "discovered a broken post-it pad...[and] spent considerable time sending emails to
15 management & HR to be compensated," "continued to request attendance of
16 conferences...[and] searched the CAS OE server for evidence to support her request,"
17 and was unable to complete assignments due to meetings with SPEEA and HR. Ex. A-
18 94.
19

20
21 48. Plaintiff's new manager Dan McQueen gave Ms. Huge much more time than he would
22 give to other engineers, yet Ms. Huge still did not complete the assignments he gave
23 her. He observed that instead of doing work, "[a] lot of the day was spent on the phone,
24 emails, researching things that weren't pertinent to the job that were more associated
25 with who is attending conferences and different aspects like that. 'Why can't I get
26 business cards?' [Ms. Huge] wasn't focused. Contacting the union a bit much during
27
28

1 work hours, and not focusing on the tasks that were assigned at the time, and a good
2 portion of the time was that.” Dkt. #78 at 64:23-65-6.

3 49. According to the observations of the job coach Jamie Eang, Ms. Huge would not focus
4 on her job or do her work at this time, instead attempting to discuss “the discrimination,
5 or emailing, you know, SPEEA and her representatives.” Dkt. #78 at 106:1-16. Instead
6 of working with the job coaches, Ms. Huge seemed fixated on building a lawsuit against
7 Boeing and did not exhibit to her job coaches a desire to improve her performance. *Id.*
8 at 103:17-105:6, 144:6-8. Ms. Huge requested that the job coaches act as eyes and ears
9 for her and assist with gathering evidence for a lawsuit. *Id.*; *see generally* Ex. A-112.
10 Jamie Eang testified, “she had her idea of myself as a job coach as someone to support
11 her in a legal testimony versus actually helping her keep her job.” Dkt. #78 at 103:17-
12 104:2. Ms. Huge made it clear that she saw Ms. Eang as “another set of eyes; to help
13 [her], you know, sue Boeing; to, you know, really make a case.” *Id.* at 103:17-22. Ms.
14 Huge’s job coaches, who had extensive experience with individuals on the autism
15 spectrum, gave Ms. Huge’s supervisors guidance on how to better work with Ms. Huge
16 and they were receptive to the feedback. Dkt. #78 at 102:21-103:13. The job coaches
17 worked to help Ms. Huge complete her job tasks and succeed at Boeing, but Ms. Huge
18 continued to not perform work. Dkt. #78 at 83:25-86:6, 140:16-142:13; Ex. A-404.

19 50. Because Ms. Huge was not performing her job, the job coaches decided that Ms. Huge
20 needed rules that would help her succeed in the workplace. Dkt. #78 at 109:13-111:5.
21 They prepared a written behavior expectation plan to address their expectations of Ms.
22 Huge in their work with her. *Id.* Ms. Huge verbally agreed with the behavior
23 expectations in a meeting with the job coaches. *Id.*
24
25
26
27
28

1 51. After one week, Ms. Huge fired her job coaches. Dkt. #78 at 82:12-83:10, 112:14-
2 113:7, 142:14-18; Exs. 139, 191. Although Ms. Huge later indicated that she fired them
3 because she wanted her counselor Ms. Bloom as her job coach, Ms. Huge was fully
4 aware that the latest information from Ms. Bloom was that she was not willing to work
5 as her job coach. Ex. 146.

6
7 52. On January 21, 2013, Boeing discharged Ms. Huge for failing to meet the performance
8 expectations in her NORA, after Boeing determined that Ms. Huge's performance
9 continued to be unacceptable and that she showed no willingness to improve. Dkt. #79
10 at 178:10-179:21; Ex. 135.

11
12 53. Although Ms. Huge knew she was discharged for cause, she misrepresented on her
13 application to Northrop Grumman that she was laid off from Boeing in 2013. Ex. A-
14 326. Dkt. #77 at 58:21-23, 59:23-60:17.

15
16 54. Ms. Huge also reapplied for employment with Boeing under different names, including
17 "Katie McMillin," "Katie Huge," Joan and Kathleen, and using different addresses,
18 including a California address, without disclosing her discharge. Dkt. #79 at 158:9-
19 159:18.

20 V. CONCLUSIONS OF LAW

- 21 1. The Court has jurisdiction over the parties and this dispute.
- 22 2. Plaintiff's claims arise under the Americans with Disabilities ("ADA") and the
23 Washington Law against Discrimination ("WLAD"), RCW 49.60 *et seq.* Plaintiff
24 argues that Boeing intentionally discriminated against her on the basis of her disability
25 or failed to provide her a reasonable accommodation in violation of the ADA or WLAD
26 by placing her on unpaid medical leave in June 2012, or withdrawing the job offer for
27
28

1 the Long Beach position, or terminating her employment in January 2013; and that
 2 Boeing intentionally retaliated against her by placing her on unpaid medical leave in
 3 June 2012 or by terminating her employment in January 2013. Dkt. #68 at 9-10.

- 4 3. The ADA states “[n]o covered entity shall discriminate against a qualified individual on
 5 the basis of disability in regard to job application procedures, the hiring, advancement,
 6 or discharge of employees, employee compensation, job training, and other terms,
 7 conditions, and privileges of employment.” 42 U.S.C. § 12112(a).
 8
- 9 4. The WLAD prohibits discrimination by an employer against an employee because of
 10 “the presence of any sensory, mental, or physical disability.” RCW 49.60.180(3).
 11
- 12 5. “The essence of the concept of reasonable accommodation is that, in certain instances,
 13 employers must make special adjustments to their policies for individuals with
 14 disabilities.” *McAlindin v. County of San Diego*, 192 F.3d 1226, 1237 (9th Cir. 1999).
 15 “The ADA places a duty to accommodate on employers in order to remove barriers that
 16 could impede the ability of qualified individuals with disabilities to perform their jobs....
 17 this is a continuing duty that is not exhausted by one effort.” *Id.* (internal quotation
 18 marks and citations removed).
 19
- 20 6. “Once an employer becomes aware of the need for accommodation, that employer has a
 21 mandatory obligation under the ADA to engage in an interactive process with the
 22 employee to identify and implement appropriate reasonable accommodations.”
 23 *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1137 (9th Cir. 2001). “An
 24 appropriate reasonable accommodation must be effective, in enabling the employee to
 25 perform the duties of the position.” *Id.* The interactive process requires
 26 “communication and good-faith exploration of possible accommodations” between
 27
 28

1 employer and employee, and neither side can delay or obstruct the process. *Id.*; *see also*
 2 *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1114-15 (9th Cir. 2000) (en banc) (citing *Beck*
 3 *v. University of Wis. Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996) (“A party that
 4 obstructs or delays the interactive process is not acting in good faith. A party that fails
 5 to communicate, by way of initiation or response, may also be acting in bad faith.”)),
 6 *vacated on other grounds, U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 122 S. Ct. 1516,
 7 152 L. Ed. 2d 589 (2002); *Beck, supra* (“[N]either party should be able to cause a
 8 breakdown in the process for the purpose of either avoiding or inflicting liability.”).

- 9
 10 7. Plaintiff has elected to proceed by claiming “direct evidence” discrimination.¹ *See* Dkt.
 11 #53 at 8-9. Direct evidence “is evidence which, if believed, proves the fact [of
 12 discriminatory animus] without inference or presumption.” *Aragon v. Republic Silver*
 13 *State Disposal*, 292 F.3d 654, 662 (9th Cir. 2002) (citing *Godwin v. Hunt Wesson, Inc.*,
 14 150 F.3d 1217, 1221 (9th Cir. 1998)) (bracketed text in original). Explicit racist or
 15 sexist statements, for example, can constitute such “direct evidence” of discrimination.
 16 *Id.* (citing *Godwin*, 150 F.3d at 1221 (decision-maker who denied plaintiff a position
 17 said that he “did not want to deal with another female;” at meeting, a male co-worker
 18 gave woman who was presenting a “Barbie Doll Kit” containing two dildos and a bottle
 19
 20
 21

22 ¹ Under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973), a plaintiff
 23 alleging disparate treatment must first establish a *prima facie* case of discrimination. Specifically, the plaintiff
 24 must show that (1) she belongs to a protected class; (2) she was qualified for the position; (3) she was subject to an
 25 adverse employment action; and (4) similarly situated individuals outside her protected class were treated more
 26 favorably. *Id.*; *Chuang v. University of Cal. Davis*, 225 F.3d 1115, 1123 (9th Cir. 2000). Ms. Huge asserts that she
 27 is claiming “direct evidence” discrimination. Dkt. #48 at 5. “A plaintiff may alternatively proceed by simply
 28 producing direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not
 motivated the employer.” *Surrell v. Cal. Water Serv.*, 518 F.3d 1097, 1105 (9th Cir. 2008) (internal quotation
 marks omitted). Ms. Huge asserts that she need only prove three elements: “(1) the plaintiff is disabled within the
 meaning of the ADA; (2) the plaintiff is a qualified individual able to perform the essential functions of the job,
 with or without reasonable accommodations; and (3) the plaintiff suffered an adverse employment action because
 of her disability.” Dkt. #28 at 16, citing *Allen v. Pacific Bell*, 348 F.3d 1113, 1114 (9th Cir. 2003) (citing *Nunes v.*
Wal-Mart Stores, Inc., 164 F.3d 1243, 1246 (9th Cir. 1999)). The Court has already determined as a matter of law
 that Ms. Huge is disabled under the ADA and WLAD by virtue of her diagnoses of Asberger’s and autism. Dkt.
 #53 at 9.

of Wesson oil); *Cordova v. State Farm Ins.*, 124 F.3d 1145, 1149 (9th Cir. 1997) (employer referred to a Mexican-American employee as a “dumb Mexican”); *Lindahl v. Air France*, 930 F.2d 1434, 1439 (9th Cir. 1991) (employer stated that female candidates get “nervous” and “easily upset”); *Sischo-Nownejad v. Merced Cmty. College Dist.*, 934 F.2d 1104, 1111 (9th Cir. 1991) (employer referred to plaintiff as an “old warhorse” and to her students as “little old ladies”)).

8. The preponderance of the admissible evidence at trial fails to establish a violation of the WLAD or the ADA for the reasons discussed below.

A. Failure to Accommodate

9. The evidence did not establish that Boeing failed to affirmatively adopt reasonable measures that were available to Boeing and necessary to accommodate any disability of Ms. Huge. The preponderance of the evidence showed that Boeing spent great time and effort to engage in the interactive process with Ms. Huge in good faith after she requested accommodations.
10. Boeing attempted in good faith to provide Ms. Huge with reasonable accommodations by providing her with written instructions, unpaid leave, and job coaches. These accommodations were not attempted in a cursory or callous fashion; they were put forth in several permutations after lengthy consultations between medical, HR, and legal representatives of Boeing and Ms. Huge.
11. Most critically, the record shows that Ms. Huge repeatedly failed to engage in the interactive process in good faith. From Boeing’s perspective, Ms. Huge’s requests for accommodation were contradictory, at first requesting no accommodation, then requesting several different accommodations, then requesting that only one be tried at a

1 time. Ms. Huge repeatedly delayed or obstructed the process, even after obtaining legal
2 counsel. Throughout the interactive process, Ms. Huge was implicitly and even
3 explicitly focused on building a lawsuit against Boeing, and this contributed to the
4 repeated breakdowns in the interactive process. As a matter of law, this does not
5 constitute good faith. Finally, Ms. Huge failed to engage in the interactive process in
6 good faith when she effectively terminated the job coaching services she was receiving
7 from ENSO.
8

9 12. Ms. Huge's failure to engage in the interactive process in good faith removed Boeing's
10 obligation to provide a reasonable accommodation and thus the Court need not
11 determine if Ms. Huge met her burden of establishing that she could perform the
12 essential functions of her job with or without reasonable accommodation. Even if she
13 could, her claim fails.
14

15 13. The Court finds in favor of Boeing on this claim.

16 **B. Intentional Discrimination Claim**

17
18 14. Ms. Huge has failed to demonstrate direct evidence that Boeing intentionally
19 discriminated against her by placing her on unpaid medical leave in June 2012,
20 withdrawing the Long Beach, CA job offer, or terminating her employment in January
21 2013.
22

23 15. Boeing had legitimate, non-discriminatory reasons for placing Ms. Huge on unpaid
24 medical leave in June 2012. This leave was part of Boeing's search for a reasonable
25 accommodation for Ms. Huge's disability. Boeing's actions can be explained by Ms.
26 Huge's conflicting requests for accommodation and her failure to engage in the
27 interactive process in good faith.
28

1 16. Boeing had legitimate, non-discriminatory reasons for withdrawing the Long Beach,
2 CA job offer. Long Beach Manager Dung Tran credibly testified that he had no
3 knowledge of Ms. Huge's disability or that she was on medical leave, and that he did
4 not believe he could wait for Ms. Huge to become available to fill the position in his
5 organization, for which there was a pressing need.

6
7 17. Boeing had legitimate, non-discriminatory reasons for terminating Ms. Huge's
8 employment and any other adverse employment action taken with respect to Ms. Huge.
9 These reasons included Ms. Huge's repeated unwillingness to perform the tasks
10 required for her position.

11
12 18. There is insufficient evidence to find that Boeing's stated reasons for terminating Ms.
13 Huge's employment, her failure to meet performance expectations for the IE 3 position
14 and her failure to demonstrate willingness to improve her performance, were pretext for
15 disability discrimination.

16 **C. Retaliation**

17
18 19. There is insufficient evidence to find that any statutorily protected activity that Ms.
19 Huge engaged in was a substantial motivating factor in any adverse employment action
20 by Boeing.

21
22 20. The preponderance of the evidence showed that Boeing's decision to place Ms. Huge on
23 leave was not retaliatory, it was part of the oft-derailed interactive process.

24
25 21. The preponderance of the evidence showed that Boeing's decision to terminate Ms.
26 Huge's employment for failure to meet performance expectations for her position and
27 failure to demonstrate willingness to improve her performance was not retaliatory.
28

1 22. There is insufficient evidence to find that Long Beach manager Dung Tran had
2 knowledge of any protected activity that Ms. Huge engaged in or that his decision to
3 rescind Ms. Huge's Long Beach job offer was significantly motivated by any protected
4 activity that Ms. Huge engaged in.

5
6 **VI. ORDER**

7 Having fully considered the evidence presented at trial, the exhibits admitted into
8 evidence, and the argument of counsel, and being fully advised, the Court finds in favor of
9 Defendant. This matter is now CLOSED.

10 DATED this 4th day of March 2016.

11
12 

13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28